

UNITED STATES DISTRICT COURT
OHIO SOUTHERN DISTRICT COURT
AT CINCINNATI
CRIMINAL CASE FILE NO: CR1-02-030-001

JAMES CARTER
(PETITIONER)

PETITIONER

VS. MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR
THE REDUCTION OF SENTENCE IN PURSUANT TO TITLE
18 U.S.C. SECTION 3582(c)(2)

UNITED STATES OF AMERICA

RESPONDENT

CONCLUSION OF LAW

THE PETITIONER RESPECTFULLY SUBMITS THIS CONCLUSION OF LAW THAT THIS PETITION FOR THE REDUCTION OF SENTENCE IN PURSUANT TO TITLE 18 U.S.C. 3582(c)(2) BE ADDRESSED BY THIS HONORABLE COURT AND THAT AN ORDER BE ENTERED THAT THIS PETITION BE HELD IN ABEY-ANCE UNTIL MARCH OF 2008, EFFECTIVE DATE FOR THE APPLICATION OF EXPRESSED RETROACTIVITY AS TO U.S.S.G. 2D1.1(c), AS OUTLINED BY THE US. SENTENCING COMMISSION.

IN DECEMBER OF 2007, THE U.S. SENTENCING COMMISSION APPROVED THE APPLICATION OF EXPRESSED RETROACTIVITY TO BE APPLIED TO THE U.S.S.G., SECTION 2D1.1(c), EFFECTIVE MARCH OF 2008, IN WHICH AT SUCH TIME THE PETITIONER RESPECTFULLY REQUESTS THAT THIS COURT ENTER AN ORDER GRANTING THE PETITIONER THE TWO-LEVEL DECREASE TO HIS BASE OFFENSE LEVEL AS WELL AS GRANT ANY AND ALL FURTHER AND APPROPRIATE RELIEF THAT THE PETITIONER IS ENTITLED TO AS A SURE

MATTER OF LAW.

REQUEST FOR LIBERAL INTERPRETATION OF
PETITION FOR THE REDUCTION OF SENTENCE
IN PURSUANT TO TITLE 18 U.S.C.

3582(c)(2)

THE PETITIONER RESPECTFULLY ASSERTS THAT HE IS COMPELLED TO FILE THIS PETITION FOR THE REDUCTION OF SENTENCE BEFORE THIS HONORABLE U.S. DISTRICT COURT, IN A PRO SE MANNER, SUO NOMINE, SUI JURIS, AND THAT HE IS AS A MATTER OF FUNDAMENTAL FEDERAL LAW THUS ENTITLED TO THE GENEROUS INTERPRETATION ADDRESSING . . . , AND ALL DUE AND JUST ARGUMENTS OF LAW IN WHICH HIS PLEADING SUGGESTS. IN SUPPORT OF THIS CONTENTION, IT IS OFFERED THAT THE HIGH AND JUST COURT'S OF OUR LAND EXPRESSLY HELD IN THIS MATTER OF HUGHES VS. ROE, 449 U.S. 5.9 (1980), THAT A PRISONER'S PRO SE COMPLAINT IS TO BE HELD TO "LESS STRINGENT STANDARDS THAN THAT OF FORMAL COMPLAINTS AND PLEADINGS FILED OR DRAFTED BY LAWYERS."

ANALYSIS

A PETITION FOR THE REDUCTION OF SENTENCING IS THE CORRECT AND AUTHORIZED LEGAL REMEDY WHEN A DEFENDANT IS SERVING A TERM OF IMPRISONMENT AND THE GUIDELINE RANGE APPLICABLE TO THE DEFENDANT HAS SUBSEQUENTLY BEEN LOWERED AS A RESULT OF AN AMENDMENT TO THE GUIDELINES MANUAL AS IS LISTED IN SUBSECTION (c) OF U.S.S.G. 1B1.10(a).

THE PETITIONER ASSERTS THAT ON MAY 1, 2007, PURSUANT TO 28 U.S.C. SECTION 994(a)AND(p), THE UNITED STATES SENTENCING COMMISSION SUBMITTED TO CONGRESS AMENDMENTS TO THE FEDERAL SENTENCING GUIDELINES THAT BECAME EFFECTIVE NOVEMBER 1, 2007. AMENDMENT (9),

WHICH PERTAINS TO OFFENSES INVOLVING COCAINE BASE ("CRACK"), WAS APPROVED TO LOWER THE GUIDELINE SENTENCING RANGE FOR CERTAIN CATEGORIES OF OFFENSES AND OFFENDERS, SEE 72 FR 28557 (MAY 21, 2007).

THE CRACK COCAINE AMENDMENT ADJUSTS DOWNWARD BY TWO-LEVELS THE BASE OFFENSE LEVEL ASSIGNED TO EACH THRESHOLD QUANTITY OF CRACK-COCAINE LISTED IN THE DRUG QUANTITY TABLE IN SECTION 2D1.1 (UNLAWFUL MANUFACTURING, IMPORTING, EXPORTING OF TRAFFICKING (INCLUDING POSSESSION WITH INTENT TO COMMIT THESE OFFENSES); ATTEMPT OR CONSPIRACY.

IN DECEMBER OF 2007, THE U.S. SENTENCING COMMISSION APPROVED THE APPLICATION OF EXPRESSED RETROACTIVITY TO APPLY TO SECTION 2D 1.1(c) OF THE SENTENCING GUIDELINES, EFFECTIVE MARCH 2008. UNDER THE STATUTORY AUTHORITY OF THE U.S. SENTENCING COMMISSION, THE COMMISSION IS STATUTORILY AUTHORIZED TO DETERMINE WHETHER A GUIDELINE AMENDMENT THAT REDUCES THE SENTENCING RANGE MAY BE RETROACTIVELY APPLIED. SECTION 994(u) OF TITLE 28 U.S.C. SPECIFICALLY PROVIDES THAT:

[I]F THE COMMISSION REDUCES A TERM OF IMPRISONMENT RECOMMENDED IN THE GUIDELINES APPLICABLE TO A PARTICULAR OFFENSE OR CATEGORY OF OFFENSES, IT SHALL SPECIFY IN WHAT AMOUNT THE SENTENCES OF PRISONERS SERVING TERMS OF IMPRISONMENT FOR THE OFFENSE MAY BE REDUCED.

SECTION 3582(c)(2) OF TITLE 18 U.S.C. PROVIDES THAT THE COURT MAY NOT MODIFY A TERM OF IMPRISONMENT ONCE IT HAS BEEN IMPOSED EXCEPT THAT-

IN THE CASE OF A DEFENDANT WHO HAS BEEN SENTENCED TO A TERM OF IMPRISONMENT BASED ON A SENTENCING RANGE THAT HAS BEEN SUBSEQUENTLY LOWERED BY THE SENTENCING COMMISSION PURSUANT TO 28 U.S.C. 994(o), THE COURT MAY REDUCE THE TERM OF IMPRISONMENT, AFTER

CONSIDERING THE FACTORS SET FORTH IN SECTION 3553(a) TO THE EXTENT THAT THEY ARE APPLICABLE, IF SUCH A REDUCTION IS CONSISTENT WITH APPLICABLE POLICY STATEMENTS ISSUED BY THE SENTENCING COMMISSION.

ON JANUARY 17, 2003, THE PETITIONER WAS SENTENCED TO A TOTAL TERM OF 151 MOS. TO INCLUDE A TERM OF SUPERVISED RELEASE OF 5 YEARS, FOR THE VIOLATION OF TITLE 21 U.S.C. 841 (a)(1),

AT THE TIME OF THE INITIAL SENTENCING, THE PETITIONER HAD A BASE OFFENSE LEVEL OF 29, WITH A CRIMINAL HISTORY CATEGORY OF VI, THUS SUBJECTING HIM TO A GUIDELINE RANGE OF 151 TO 188 MOS. GIVEN THE RETROACTIVE APPLICATION OF THE NEW AMENDMENT GUIDELINES, U.S.S.G. 2D1.1(c), EFFECTIVE MARCH 2008, THE PETITIONER IS ELIGIBLE TO RECEIVE THE TWO-LEVEL DECREASE TO THIS BASE OFFENSE LEVEL WHICH WILL CLEARLY CHANGE HIS GUIDELINE RANGE OF 151 TO 188 MOS., TO A RANGE OF 130 TO 162, IN WHICH THE PETITIONER RESPECTFULLY AND EARNESTLY REQUESTS THAT THE JUDGE MAKE AN INDEPENDENT ASSESSMENT UNDER 18 U.S.C. SECTION 3553(a) AND PURSUANT TO THE DISTRICT COURTS DUTY UNDER BOOKER AND RITA, THAT THE PETITIONER BE SENTENCED AT THE LOW-END OF THE SENTENCING GUIDELINE RANGE.

WHEREFORE, THE PETITIONER RESPECTFULLY REQUESTS THAT THIS HONORABLE U.S. DISTRICT COURT ENTER AN ORDER GRANTING THE PETITIONER THE FOLLOWING RELIEF: 1). THAT THE PETITIONER BE GRANTED THE TWO-LEVEL DECREASE IN HIS BASE OFFENSE LEVEL AS IS APPLICABLE UNDER U.S.S.G. 1B1.10(a) AND 2D1.1(c), 2). THAT THE PETITIONER BE GRANTED THE APPOINTMENT OF COUNSEL AS TO THESE PROCEEDINGS, 3). THAT THE PROPER AND NECESSARY WRIT BE FILED TO TRANSPORT THE PETITIONER TO COURT FOR THESE PROCEEDINGS, 4). THAT THIS PETITION BE GRANTED AND THAT THE PETITIONER BE RE-SENTENCED UNDER THE CRITERIA OF BOOKER,

RITA AND 18 U.S.C. 3553(a). IT IS FURTHER BEING RESPECTFULLY REQUESTED THAT THIS PETITION FOR THE REDUCTION OF SENTENCING BE ORDERED TO BE HELD IN ABEYANCE UNTIL THE EFFECTIVE DATE OF THE RETROACTIVITY OF THE AMENDMENT.

RESPECTFULLY SUBMITTED,

James Carter
PETITIONER PRO SE
REG. NO: 01563-061
F.C.I. MANCHESTER
P.O. BOX 4000
MANCHESTER, KY. 40962-4000

CERTIFICATE OF SERVICE

I JAMES CARTER, DO HEREBY CERTIFY THAT TRUE, ACCURATE AND CORRECT COPIES OF THE FOREGOING PETITION FOR THE REDUCTION OF SENTENCING IN PURSUANT TO 18 U.S.C. 3582(c)(2) HAS BEEN MAILED, TO INCLUDE ONE (1) ORIGINAL PLEADING AND TWO (2) COPIES, TO THE CLERK'S OFFICE OF THE U.S. DISTRICT COURT AT THE FOLLOWING ADDRESS: U.S. DISTRICT COURTHOUSE POTTER STEWART U.S. COURTHOUSE 100 EAST FIFTH STREET SUITE 324 CINCINNATI, OH 45202 BY PLACING THEM IN THE U.S. POSTAL MAIL, HERE AT THE FEDERAL CORRECTIONAL INSTITUTE, MANCHESTER ON THIS 14 DAY OF FEBRUARY, 2008.

RESPECTFULLY SUBMITTED,

James Carter
PETITIONER PRO SE,
REG. NO: 01563-061
F.C.I. MANCHESTER
P.O. BOX 4000
MANCHESTER, KY. 40962-4000